IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

WRS, INC. d/b/a WRS MOTION PICTURE LABORATORIES, a corporation,	)	CIVIL DIVISION
Plaintiff,	)	No.: 00-CV-2041
v.	)	
PLAZA ENTERTAINMENT, INC., a corporation, ERIC PARKINSON, an individual, CHARLES VON BERNUTH, JOHN HERKLOTZ, an individual,	)	
Defendants.	)	

DEFENDANT'S MOTION FOR EXTENSION OF TIME

AND NOW comes the Defendant, John Herklotz, (hereinafter "Herklotz" or "Mr. Herklotz"), by and through his attorneys, Burns, White & Hickton, LLC and John P. Sieminski, Esquire, and files the within Motion for Extension of Time, of which the following is a statement:

1. On October 13, 2006, Plaintiff filed a Motion for Summary Judgment as to Damages Against Defendant John Herklotz.

2. On October 17, 2006, the Court entered an Order requiring Defendant Herklotz to file a response to WRS's Motion for Summary Judgment as to Damages by October 27, 2006. Defendant Herklotz is filing this Motion to respectfully request an

extension of time to respond to WRS's Motion for Summary Judgment as to Damages, for the reasons that follow.

3. The documents that memorialize the business transactions at issue in this matter are voluminous and complex. Moreover, there are significant doubts about whether WRS has actually produced all of the relevant material. In the period of time since the deposition of WRS's president, Jack Napor, WRS has produced significantly more documents than were originally produced pursuant to a valid request for production of documents by Herklotz, even though Mr. Napor had previously on at least one occasion represented that the production was complete.[1]

4. Part of the basis upon which WRS seeks summary judgment as to damages is the report of Thomas Claasen, CPA of the accounting firm Schneider Downs.[2] Pursuant to the Consent Order pertaining to the engagement of Schneider Downs, that firm was retained as a result of discussions during a settlement conference held by the Court to prepare a preliminary advisory opinion. (A copy of the referenced Order of Court is appended hereto as Exhibit "B.") Pursuant to the Court Order referenced, it was contemplated that any party could use the Schneider Downs report in

[1] The completeness of WRS's document production has been an ongoing problem in this matter. See an e-mail from counsel for Defendant Herklotz to counsel for WRS dated June 13, 2006, appended to this Motion as Exhibit "A." In fact, since Schneider Downs began its investigation in May of this year, WRS has produced many more boxes of documents than it had produced previously. As indicated by the referenced e-mail and its attachment, some of the recently-produced documents are highly relevant to the issues in this case. (i.e. An un-cashed $100,000.00 check from Plaza to WRS.)

[2] The final Schneider Downs report is dated October 6, 2006 but was received by Herklotz's counsel on October 9, 2006.

their respective case (Paragraph 3), but no party was bound by the report and the Court Order expressly did not "preclude any party from retaining a separate forensic accountant." (Paragraph 4 of the Court Order.) This is exactly what Defendant Herklotz intends to do.

5. Appended to this Motion as Exhibit "C" is a letter from Charles F. O'Hanlon, III, Managing Director of Cornerstone Capital Advisors, Ltd. As indicated in Mr. O'Hanlon's letter, there are "serious questions as to the accuracy of the analysis and conclusions in the Schneider Downs report."

6. In addition to the issues raised by Mr. O'Hanlon, Defendant Herklotz and his counsel have serious concerns about the methodology employed by Schneider Downs. (The Schneider Downs report is appended hereto as Exhibit "D.") At the initial meeting with Schneider Downs, Mr. Claasen indicated that it would be important for Schneider Downs to obtain a full set of records from Defendant Plaza Entertainment, Inc., including tax returns. While noting that it "was not engaged to verify the accuracy of the accounting records of Plaza Entertainment," Schneider Downs at the same time indicated that, of the seventy-three (73) WRS invoices that it did attempt to correlate with Plaza records, thirty two (32), or 44% of the invoices could not be correlated or "agreed to." (Page 3 of Schneider Downs report.) In essence, a more thorough forensic examination of the records will indicate that Schneider Downs merely engaged

in a mechanical process of "ticking and tieing" without making necessary inquiries about the issues surrounding the financial arrangements between WRS and Plaza.[3]

7. Schneider Downs was engaged in May of this year and took approximately six months to perform its investigation and prepare its report. Based upon this timeframe, as a reference point, the complexity of the financial transactions and documentation at issue, and the fact that next month contains the Thanksgiving holiday, Defendant Herklotz respectfully requests an additional 45 days from the original deadline set by the Court, or until December 11, 2006 for the filing of a response to Plaintiff's Motion for Summary Judgment as to Damages.

WHEREFORE, Defendant, Herklotz, respectfully requests this Honorable Court to enter an Order extending the deadline for the filing of a response to Plaintiff's Motion for Summary Judgment as to Damages to December 11, 2006.

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[3] This is not the only issue with the Schneider Downs report. Another issue pertains to the transactions related to the National Bank of Canada lockbox. On page 3 of its report, Schneider Downs noted that, "of the 65 total deposits recorded within the account detail from April 1998 through December 2000, 7 deposits could not be traced to National Bank of Canada statements, as these statements were not provided to Schneider Downs by WRS." In addition, a number of other "red flags" that Schneider Downs ignored include: a) An inability to trace more than 56% of WRS's invoices to Plaza's accounts payable; b) An incomplete analysis of the WRS-Plaza lockbox arrangement; c) An incomplete analysis of the WRS-Plaza Services Agreement; d) An inability to trace checks allegedly paid by Plaza to WRS prior to 1998; e) An incomplete or lack of analysis of the un-cashed $100,000 check from Plaza dated 6/29/99 and a $40,000 NSF check (a copy of which is appended hereto as Exhibit "E") from Plaza (signed by Charles Von Bernuth); f) An incomplete analysis of other accounts that Plaza principals may have had with WRS that were not denominated as "Plaza." e.g. "Bread and Water" and "Entertech." Bread and Water apparently had two accounts. (See Exhibit "F"); g) Plaza used two bank accounts for receipts and disbursements: Imperial Bank and Bank of America; and, h) During all of 1998, only 5 checks are shown as payments to WRS, one of which was the $40,000 NSF check and one a $10,000 payment to Bread and Water.

Respectfully submitted,

By: *John P. Sieminski*

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